

## **How to address a Brownfield project under the VOAP**

In August, 2001, significant changes were made to the Voluntary Cleanup Oversight and Assistance Program as a result of enactment of the Brownfields Project Voluntary Oversight and Assistance Program amendment. The changes gave the VOAP the opportunity to deal with a broader range of contaminants including petroleum as well as the ability to adjust or in certain cases waive its \$5000 participation fee if the public welfare is served. It also offers relief from liability under all environmental statutes that is transferable to successors in title. The following is a step by step approach on how to address a Brownfields Project under the VOAP.

- 1. Perform Phase I and II Environmental Site Assessment to determine if real or perceived contamination exists** - When purchasing commercial and in some cases residential property, you should solicit the services of a qualified environmental consultant to help you determine if past uses of the property resulted in contamination being released on the property. This is done in the form of a Phase I or II Environmental Property Assessment. It is customary to perform a Phase I to research the past uses and history of the property. If the Phase I indicates that the potential for contamination exists, a Phase II should be conducted. A Phase II involves taking samples of soil, surface water, groundwater and any other potentially impacted media to establish if there were indeed releases to the property. Depending on site circumstances, it may be necessary to perform additional sampling to determine the extent of contamination. It should be noted that liability protection under Tennessee's Brownfield Law rewards characterization in that the more you know about your potential property, the more liability protection you receive. You can be held potentially liable for any contamination that you fail to discover or disclose.
- 2. After completing your Environmental Assessment, contact the VOAP** –If the results of your Phase II indicate that your prospective property may have contamination issues, this is a good point to begin discussions with VOAP staff and obtain program material. You may do this by contacting Andy Shivas at 615-532-0912 or by email at [andy.shivas@state.tn.us](mailto:andy.shivas@state.tn.us). If you did not release, generate or transport the contamination on the property, you will be eligible to enter into a Brownfields Voluntary Agreement. The Voluntary Agreement will document what your responsibilities are and what you need to do to obtain closure. It should be noted that in order to obtain program information it is not mandatory to designate the exact location of the site at this time.
- 3. Determine what areas of contamination you need to address in your agreement** – Upon receiving your model agreement, you will need to decide what areas you wish to address under the agreement. It is advisable to seek the assistance and advice of an environmental consultant and attorney to determine the content of your agreement particularly if the property has complex issues. In addition, it is recommended that you schedule a conference with VOAP staff to familiarize them with your project and receive their advice as to what needs to be done to make the site safe for its next intended use. This can help expedite the process of achieving approval of your project and Agreement. It is also an excellent opportunity to get answers for any questions you might have regarding the Brownfields Agreement.

4. **Prepare, negotiate and finalize your Voluntary Agreement** – Based on feedback from your conference, you will need to complete certain sections of your Voluntary Agreement for submittal for Department approval. While some items contained in the models are necessary due to statutory or programmatic considerations and cannot be changed, there is some flexibility to modify certain parts of a model based on site-specific circumstances or other considerations. It should be noted that depending on the nature of the changes, it could extend the TDEC's review time.
5. **Conduct public notice and constructive notice** – The VOAP statute requires that certain public notice requirements be conducted. Notice must be sent by certified mail to all local governments having jurisdiction over any part of the subject property and to all owners of adjoining properties. If the participant desires to receive Third Party Contribution Protection it will be necessary to publish a notice in a newspaper of geographical distribution summarizing the agreement and provide a 30 day comment period for any interested party to respond. Upon completion of the public comment period, the Agreement can be finalized.
6. **Perform agreed actions in Voluntary Agreement** – The finalized Agreement will contain the various activities that you and the Department have agreed to conduct in order to receive liability protection. This can be a variety of activities such as reimbursement of past costs to the remedial action fund, implementation of a Notice of Land Use Restrictions to restrict future use of the property or conducting various investigative and remedial actions to make the site safe for its next intended use.
7. **Site Closure and No Further Action Letter** – Upon completion of all agreed actions in your agreement, you will receive a No Further Action Letter. This letter is extremely important to demonstrate to potential buyers or lenders that you have addressed the contamination to the satisfaction of the Department.

One frequently asked question is how much will it cost to address a site under the VOAP? Currently, the VOAP does not charge a participation fee to parties that can demonstrate that they did not release, generate or transport the contamination to be addressed at the site. The Voluntary party will be responsible for any oversight costs related to the project. Oversight costs can include mileage for site visits, lab expense, the current hourly rate and benefits for project managers and associated staff and state overhead costs which is capped at 15.00%. It should be noted that the average per hour rate for most project managers is less than \$30.00 per hour. The Program strives to keep oversight costs as low as possible.